

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.297 OF 2004

Shri Narayan Gopal Kulkarni .. Appellant

Versus

Shri Raghunath Gopal Kulkarni .. Respondent

Mr.Dilip Bodake for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.:

1. The present appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Karad on 12th November, 2003 allowing the civil Appeal No.57 of 2002 and dismissing the Civil Appeal No.83 of 2002 with regard to the order passed in Regular Civil Suit No.180 of 1998.

2. I have heard the learned counsel for the appellant. None appears for the respondent.

3. The appellant-plaintiff had filed the suit for perpetual injunction simplicitor against his own brother alleging that his possession in the suit property was threatened by him and therefore, he sought perpetual injunction against the defendant. The learned trial judge was of the view that the plaintiff had proved his title to the suit property and that the defendant was obstructing his possession in the suit property. The trial judge also held that both the parties i.e. plaintiff and defendant were in joint possession of the property and as such the suit was partly decreed by rejecting the plea for injunction but at the same time directing the defendant not to alienate or transfer the suit property to third person. The appeals were carried by both the parties to the Addl. District Court, Karad. The learned Addl. District Judge heard both the sides and came to the conclusion that the plaintiff had in fact failed to prove his lawful possession over the suit land on the date of the suit and also had failed to prove alleged obstruction by the defendant and as such

was non suited. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The suit itself was for perpetual injunction simplicitor and the only issue, which was sought to be adjudicated, was whether the plaintiff was in exclusive and lawful possession of the suit property on the date of the suit, and if so, whether his possession was obstructed by the defendant. As noted earlier the learned trial judge came to the conclusion that both the parties were in joint possession and therefore, the relief of injunction was rejected at the trial stage. The learned lower appellate court judge has come to the conclusion that the plaintiff has failed to establish his exclusive possession over the suit property on the basis of available evidence. It was urged on behalf of the appellant that the Certificate under Section 32(M) of Bombay Tenancy and Agricultural Land Act, 1948 issued in respect of the suit property was in favour of the plaintiff alone, which gave him exclusive title to the suit property. However, the evidence on record is sufficient to show that the plaintiff was Karta of the family and Certificate was

issued in his name not for exclusive owner but for the purpose of joint family property, which aspect is fortified by further evidence that both the parties were found to be jointly in possession of the suit property and as such both the courts below have held that perpetual injunction could not be granted against the co-owner, who was in joint possession of the property.

5. On perusal of the judgment of both the courts below and after hearing the learned advocate for the appellant I am satisfied that the evidence on record is properly appreciated by both the courts below and therefore, it would brook no interference.

6. In the result the appeal stands dismissed.

7. Consequently the civil application No.288 of 2004 also stands dismissed. Ad-interim relief granted pending the appeal stands vacated.
